

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GEORGE JOSHUA HERRERA, as
personal representative of the
WRONGFUL DEATH ESTATE OF
GEORGE HERRERA, and on his own behalf,
and CRYSTAL HERRERA SENA,

Plaintiffs,

v.

1:21-cv-00465-SCY-LF

THE VILLAGE OF ANGEL FIRE
and MARK FITCH,
in his individual capacity,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL SUPPLEMENTATION**

THIS MATTER comes before the Court on plaintiffs' Motion to Compel, filed on June 28, 2023. Doc. 123. Defendant The Village of Angel Fire filed a response on July 12, 2023. Doc. 135. Plaintiffs replied on July 24, 2023. Doc. 143. Having reviewed the briefing, the Court finds the motion moot except to the extent that it requests a supplemental statement that all responsive documents have been produced, and therefore GRANTS the motion to that extent and otherwise DENIES it.

In their motion to compel, plaintiffs ask the Court to compel production of documents and evidence that plaintiffs learned of during a deposition taken on June 1. Doc. 123 at 1–2. The Village of Angel Fire, in its response, states that it produced all relevant documents on June 30, 2023, and July 11, 2023, Doc. 135 at 2, and that it told plaintiffs that “there are no more materials to supplement,” *id.* at 3. Plaintiffs' motion is thus moot as to these documents. Given

this representation, the Court agrees that this motion probably was unnecessary, but it also is perplexed as to why defendants were unwilling to supplement their responses as plaintiffs requested. *Id.* at 3. Although FED. R. CIV. P. 26(e)(1) does not require an affirmative statement that everything has been produced, it also does not prohibit such a statement. Given that plaintiffs only learned that the materials were missing by taking a deposition, it is understandable that they would want an affirmative statement that defendants now have produced all the additional materials. The Court consequently will GRANT plaintiffs' request, as elaborated in their reply, that defendants supplement their response to state that they have provided all the responsive documents. Doc. 143 at 2. The Court ORDERS defendants to supplement their response to state that they have provided all responsive documents within their possession, custody, or control to Requests for Production Nos. 6, 8, 11, and 13. The Court declines to award attorneys' fees and costs to any party.

IT IS SO ORDERED.



Laura Fashing
United States Magistrate Judge